



## □ Your Missouri Courts

# State of the Judiciary, Jefferson City, January 2017

24 January 2017

### **Missouri's chief justice delivers 2017 State of the Judiciary address**

*Patricia Breckenridge, chief justice of the Supreme Court of Missouri, delivered the following State of the Judiciary address Tuesday morning, January 24, 2017, during a joint session of the Missouri General Assembly in Jefferson City, Mo.*

Lieutenant Governor Parson, Speaker Richardson and members of the House, President Pro Tem Richard and members of the Senate, Governor Greitens and other statewide officers. I am proud to be here today as the voice of the judicial branch.

I am so grateful to have served in the judiciary since my appointment to the trial bench by Governor Kit Bond, to the court of appeals by Governor John Ashcroft, and to the Supreme Court by Governor Matt Blunt. It has been my privilege to serve with judges appointed by both Republican and Democratic governors and to work to decide cases according to the law.

Before I begin, I would like to introduce my husband, Bryan. For 40 years, he has loved and supported me and kept me grounded. Thank you for being here with me this morning.

Earlier this month, I swore in Governor Greitens and other statewide officials. Not all chief justices get to participate in this democratic transition of power, and it was such an honor. For me, it served as a reminder of how alike we are. We share a commitment to work separately and together to make the great state of Missouri *even greater*. Some, however, focused on how we are different. One tweet questioned the legitimacy of the oaths because of those differences. Apparently, I – correctly – said “MissourAH,” while *you* said, “MissourEE.”

Our different pronunciations reflect the rich diversity of our state – we come from cities, towns and rural areas to work in Jefferson City. You represent literally every nook and cranny of Missouri. We on the Supreme Court are also geographically diverse. I am from Nevada, in the southwest corner of the state. Judge Zel Fischer grew up in Watson, as far north and west as you can get and still be in Missouri (rumor has it, you can see Nebraska from there). Judge Paul Wilson is from right here in Jefferson City. Judge George Draper is from St. Louis, and while Judge Laura Stith grew up in St. Louis, she has lived in Kansas City for more than 35 years. And Judge Mary Russell is from Hannibal.

This is my fourth and, I am relieved to say, last big speech to deliver as chief justice. But I welcome the chance to talk about my favorite subject – the courts, often called the “least understood” branch of government.

Our 3,400 employees serve in your courts and, every year, are asked to do more with less. I encourage you to visit a local courthouse and meet these dedicated professionals who embrace their responsibility to treat every person fairly and equitably and to resolve disputes according to the law.

Our state employees are the lowest paid in the nation. Despite this, they are hardworking, dedicated, and deserving of our respect. I know budget times are tight, but we must find a way to pay them 21st century wages for 21st century work. Please join me in recognizing our state employees who serve in *all* branches of our government.

In the last fiscal year, more than 1.8 million cases were filed in Missouri courts – of these, 60 percent involved municipal ordinance violations. In our circuit courts, the largest number of cases involve the prosecution of state crimes. Seventeen percent of our cases are civil – primarily small claims, domestic relations, landlord tenant matters and disputes of less than \$25,000. About 5 percent of *civil* cases – and fewer than 1 percent of *all* cases – involve tort claims like wrongful death or personal injury.

I understand Governor Greitens and some of you in the General Assembly have called for changes in the law governing certain types of cases. Do *not* view these calls for action as a condemnation of our judicial system.

Our citizens can be proud of our courts, where they go to resolve their disputes peaceably and where their constitutional rights are protected. Day in and day out, in the courtrooms in your communities, hundreds of thousands of cases are adjudicated without fanfare. We, more than anyone, want our courts to live up to their responsibilities to properly administer justice.

So when serious problems in some St. Louis County municipal divisions came to light, we owned those problems. Though the vast majority of our 625 municipal divisions function well, the challenge of problem municipal divisions in St. Louis County and elsewhere in the state became an opportunity to make all of our municipal divisions better.

From within the judicial system, judges, prosecutors, defense attorneys, and clerks rolled up their sleeves and crafted solutions that would work. We are grateful for this leadership. Their yeoman's work turned recommendations for reforms into tangible change. Changes came when our Court imposed mandatory standards – effective upon their adoption in September – detailing how municipal divisions must operate under the law. The *standards are extensive*. We also put in place a code of conduct for all municipal division personnel and defined what constitutes a conflict of interest for judges who choose to wear multiple hats.

While some say the standards don't go far enough, others say they have gone too far. Some municipalities are finding it difficult to do what they *should* have been doing all along. But my years on the trial bench taught me if both sides are not totally satisfied, perhaps we got it right.

We and the state court administrator's office have also worked with a number of municipalities to consolidate their court operations, including 13 in St. Louis County. Consolidation results in reduced costs, which we hope will disincentivize municipalities from using courts as revenue generators. Many have worked hard to accomplish consolidation, particularly in St. Ann and Normandy. Unfortunately, the cost savings may not be fully realized for some, due to a law that caps the number of municipalities a judge may serve.

Additionally, Missouri's constitution places responsibility on the presiding judge of each circuit to supervise the municipal divisions. So, last month, the Supreme Court adopted protocols to guide presiding judges and make their authority clear. We recognize supervision poses a special challenge in St. Louis County and, in an effort to assist, the Supreme Court is providing municipal division monitors.

Municipal divisions are not alone in the spotlight. Others leveled criticisms at our juvenile divisions, including their very structure. Missouri has never been afraid to lead, and this state decided long ago our juvenile system should be different from other states. Our juvenile proceedings are designed to be non-adversarial, and all parties are required to act in the best interest of the child.

Nonetheless, we thoughtfully considered the criticisms and responded by enacting reforms that make *all* of our juvenile divisions better. In doing so, the judiciary worked with leaders from around the state to develop standards for juvenile officers. These standards, adopted in December, create uniform practices and procedures; establish a code of conduct; and outline best practices that promote better outcomes for Missouri's children.

Our next goal is to improve pretrial incarceration practices. Incarcerating persons simply because they are too poor to post bond needs to be examined in both municipal and criminal cases. Under our Missouri Constitution, an individual may be incarcerated before trial only when charged with a capital offense; when a danger to a crime victim, a witness, or the community; or a flight risk. All other persons are entitled to reasonable conditions of release prior to trial, based on the particular circumstances of their cases.

Our cities and counties incur costs for pretrial incarcerations of people who simply are poor. There are individual and societal consequences from these unwarranted pretrial incarcerations. The consequences impact the defendants, their families and, ultimately, the state. Defendants lose not only their freedom but also their ability to earn a living and to provide for loved ones. Children may even come into state custody, because incarcerated parents are not home to care for them. And – after only *three days* in jail – the likelihood that an individual will commit future crimes also increases.

A Supreme Court task force will examine how other states and cities have addressed the problem of unwarranted pretrial incarceration and recommend changes to our practices. We look forward to sharing what we learn with you and working together to enact common-sense reforms.

We also will be sharing with you the work of the Supreme Court's committee on treatment courts. The committee is completing a strategic plan that can be a roadmap to improving both the quality of and access to treatment courts in Missouri. Our branches of government have long worked together because treatment courts are a proven, cost-effective way to change the lives of persons charged with crimes due to addiction or mental health disorders. Missouri is a national leader in developing quality treatment courts; however, we have not realized their full potential to reduce recidivism, produce productive citizens, reunify families, and address the needs of our veterans. Your continued support will be essential if we ever are to realize the full potential of treatment courts.

Technology also remains a top priority as we strive to make courts as accessible as possible to our citizens. As Governor Greitens noted last week, we need a modern government that allows people to do more online instead of making them wait in line. We share that goal.

We are thankful for the expertise of our 21st century workforce, which has been invaluable in improving and modernizing our computer systems. Our judges and staff are collaborating in the development of software that puts more information at a judge's fingertips and will allow potential jurors to get information about their service from their smartphones. We are also developing a traffic and ordinance case management system to increase the efficiency of municipal divisions in managing and disposing of cases, assessing authorized costs, and processing payments. The system will ultimately reduce the number of litigants who must come to court because they will have increased access to the courts from their mobile devices.

We are grateful the legislature recognized the need to automate our courts back in 1994 and has partnered with and supported us in accomplishing that goal. The work has been overseen by the Missouri Court Automation Committee, on which Senators Bob Dixon and Scott Sifton – along with Representatives Robert Cornejo and Joe Don McGaugh – work

with the judicial and the executive branches.

In 2016, Missouri completed its statewide electronic filing system. We are *the first* state to have e-filing in all courts of record. We also finished implementing “Pay by Web,” which allows Missourians to pay fees and costs online. And “Track this Case” lets the public receive e-mail notices of activity in pending cases. Who here doesn’t know about Case.net, which provides information about more than 20 million cases statewide and receives an average of 5 million hits every workday.

While Case.net lets you know that documents have been filed in court, you cannot access those documents without going to a courthouse and using a public computer terminal. The Missouri Court Automation Committee has recommended the judiciary allow remote access, but expansion of public access to case records can be done *only* if the security and reliability of the courts’ essential operations can be guaranteed. And such expansion of the system will require more resources than currently available. To defray the expenses of expansion and maintenance, the courts and legislature may need to consider means such as subscription fees or pay-per-view charges like those assessed by federal courts.

Equally of concern is the question of exactly what should be available online. Missouri statutes govern which case documents are public. But many of these statutes were enacted before – sometimes *long* before – the modern computer age. So it is safe to say statutes making certain case documents “public” meant available at the clerk’s office, and in paper form, not available instantly to anyone anywhere in the world.

Certainly, a strong presumption of openness is a bedrock of our legal system. But – given the unique concerns arising from online access – the Court wants to *be sure* the *legislature* has the opportunity to reexamine statutes governing public case documents to determine if they are the will of *this* body and the people *you* represent. We are willing to advise and assist in any way we can.

As we move forward with innovations and improvements, we do so with two significant changes in leadership.

In late November, our colleague Judge Richard Teitelman passed away. Simply known as Judge Rick to many, he was the first person of Jewish faith and the first legally blind person to serve as a judge of our state’s high court. He believed in the goodness of humanity and was a steadfast champion of equal justice. While we may not have always agreed in our legal opinions, we knew no friend more loyal or caring, and *we miss him*.

And so the process to fill his vacancy has begun. As provided by our state constitution, any licensed Missouri attorney who meets the age and residency requirements may apply until February 3rd. If you know of qualified individuals you believe would be an asset to our Court, please nominate and encourage them to apply. Interviews will be held at the end of February at the Supreme Court and are open to the public. The Appellate Judicial Commission will select three well-qualified nominees for the governor’s consideration. The constitution gives Governor Greitens 60 days to conduct his own review and select the new judge. We look forward to this appointment.

We also begin the year with a new leader at the Supreme Court. Bill Thompson, who expertly guided us as counsel and clerk for more than 38 years, retired in December. He was succeeded by the first woman ever to hold the position of clerk – Betsy AuBuchon. Many of you may know Betsy from her days in the capitol. She has earned our respect and trust, and we are confident she will be an exceptional leader for Missouri’s judicial system. We know these two additions to the judiciary will help us continue to make our courts better for Missouri’s citizens.

Speaker Richardson, you commented in your address on the first day of the session that we must ensure our court system is fair to *all* litigants. We agree ... and are so very grateful our courts are staffed by dedicated and talented people who share that belief and properly handle cases of *all* types. Missouri has a judicial system of which we can be proud. We constantly strive to better serve our citizens and, as we look to the future, I have no doubt we will continue to do so.

Thank you for your support of the judicial branch. I wish you all the best in your service to the people of Missouri.